IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 299 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MR.JUSTICE A.S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ORIENTAL FIRE & GENERAL INSURANCE CO.LTD. - Appellant(s)
Versus
NAVINBHAI BUDHIABHAI CHAUDHARI & 4 - Defendant(s)

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Appearance :
MR RAJNI H MEHTA for Appellant(s) : 1,
MR MA KHARADI for Defendant(s) : 1 - 2.
NOTICE SERVED for Defendant(s) : 3,
MR VM TRIVEDI for Defendant(s) : 4,
MR MB THAKORE for Defendant(s) : 5,
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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA
and
HONOURABLE MR.JUSTICE A.S.DAVE

Date : 29/03/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. By instant Appeal u/s 96 of the Code of Civil Procedure and u/s 110 D of the Motor Vehicles Act, 1939, the Appellant / original Opponent no.3 – The Oriental Fire and General Insurance Co. Ltd. seeks to challenge the judgement and award dated 20.12.1983 rendered in MACP No. 454 of 1981 by the Motor Accident Claims Tribunal (Auxiliary), Surat, by which Claim Petition filed by Respondent nos. 1 and 2 (“original Petitioners” for short), to receive the compensation of Rs.1,50,000/-, came to be partly allowed and thereby they were held entitled to receive Rs.59,000/- as compensation from the Appellant as well as original Opponent nos. 1 and 4 together with the interest @ 6% per annum from the date of application till the amount is deposited, and also with the proportionate costs.

2. On fateful day of 17th June 1981, an accident took place on Kathor-Sayan Road, within the

territorial jurisdiction of Surat District. In the said accident, the Truck bearing Registration No. GTF 2248 was involved. As per the averments made in the petition, Mahesh, the son of the original petitioners, was walking on the road. The Driver of the Truck was driving the Truck in such a fashion, violating the traffic rules and at an excessive speed, as a result thereof, he dashed the Truck with Mahesh, which caused his instantaneous death. According to the original Petitioners, the Driver of the Truck was negligent, therefore he was principally liable. It was averred by the original petitioners that the accident was the result of rash and negligent driving on the part of the Driver. At the relevant time the said Truck was driven by Respondent no.3, which was owned by Respondent no.5 and it was insured with the Appellant, therefore, they all were liable to pay compensation on the principle of vicarious liability whereas Appellant is liable to indemnify the award which was going to be passed against the owner.

3.To put forth the claim of compensation, it was averred that the deceased Mahesh was brilliant in his studies and would have studied further, if he would not have met with an accident. It

was also averred that Respondent no.2 – original claimant had undergone a family planning operation and she had further no chance of conceiving in future. Therefore she was terribly affected due to the loss of her only son. She had also suffered mental pain, shock and agony.

4. The petition was contested by the opponents by filing written statement, wherein it was denied that the Driver of the Truck was negligent at the relevant time. So far as the Appellants are concerned, they did not admit the averments made in the petition. It was also contended that the claim was on higher side. On all these counts it was prayed to dismiss the petition.

5. The Tribunal, after evaluation, analysis and scrutiny of the evidence on record, came to the conclusion that the accident was the result of the rash and negligent driving on the part of the Driver of the Truck. At the relevant time the said Truck was owned by Respondent no.5 which was insured with the Appellant. Therefore they all were liable to pay compensation.

6. So far as the quantification of compensation is concerned, the Tribunal, considering the

evidence on record came to the conclusion that the deceased Mahesh would have earned atleast

Rs.600/- per month if he would not have met with an accident and he would have contributed 50% to his family members after deducting 50% expenses for himself. Therefore, the Tribunal has considered dependency benefit of Rs.300/- per month. Applying 15 multiplier, the figure worked out was Rs.54000/- and it was held that the original claimants were entitled to receive Rs.54000/- under the head “Economic Loss”. Over and above, the Tribunal has also granted Rs.5000/- as the conventional amount under the head “Expectation of Life”. In all, the Tribunal has awarded Rs.59,000/- with interest @ 6%. It is this judgement and award which is now on anvil of scrutiny before us.

7. We have considered the submissions advanced by Mr. R.H.Mehta, learned advocate of the Appellant. We have also perused the impugned judgement and award and the set of evidence, copies whereof have been supplied by him during the course of his submission.

8. So far as the alleged accident, which has taken place on 17.6.1981 is concerned, there is no dispute. There is also no dispute that in the

said accident life of promising boy Mahesh has been lost, who was a pedestrian and he was dashed by the Truck, which was driven by it's Driver. It is settled principle of law that so far as “minor” is concerned, he cannot be attributed with the negligence. Therefore, according to us, MACT has very rightly held that the accident was a result of the rash and negligent driving on the part of it's Driver.

9. Now, so far as the quantification of compensation is concerned, Tribunal has discussed in para 12 of the impugned judgement and award. The father of the deceased boy Mahesh, whose oral testimony was recorded, has testified that his son was healthy, fond of cricket and Swimming. He had a bright academic carrier. He had a ambition to become a Doctor. It was also testified that as they belong to Schedule Tribe community, it would have been easier for his son to get admission in Medical College. At the relevant time he was 9 years of age. The Tribunal has very rightly considered the notional income of the deceased Mahesh at Rs.600/- per month and thereby deducted Rs.300/- for his upkeep and worked out dependency benefit at Rs. 300/- and applied 15 multiplier, and accordingly the amount under

the head “Economic Loss” was worked out Rs.54000/- (300 x 12 x 15). The Tribunal has also added Rs. 5000/- under the head “Expectancy of Life”. According to us the amount of Rs.59,000/- awarded by the Tribunal, to the dependent of the deceased Mahesh, is absolutely justified, and cannot be called that it is on the higher side.

10. Seen in the above context, the appeal lacks merit, and deserves to be dismissed.

11. For the foregoing reasons, the Appeal fails and accordingly is it dismissed with no order as to costs.

12. The Appeal was admitted in the year 1985. If any order with regard to the investment of the amount under the impugned award is passed, same shall be now subject to result of this Appeal and therefore, respondent nos. 1 and 2 / original claimants are entitled to encash it, if the amount is still lying under the fixed deposit scheme.

(A.M.Kapadia,J)

(A.S.Dave,J)

Jayanti*